

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

CEC Technologies, Limited

Docket No. SA04-1-000

ORDER DENYING STAFF ADJUSTMENT

(Issued December 24, 2003)

1. On January 2, 2003, the Commission issued an order (January 2 Order) directing producers/first sellers (identified in that order's appendix including Chinook Energy Corporation (Chinook)) to pay Kansas ad valorem tax refunds to Northern Natural Gas Company (Northern) as set forth in Northern's May 2002 refund report.¹ On May 8, 2003, the Commission issued an order (May 8 Order) that set for hearing Kansas ad valorem matters disputed by producers/first sellers including Chinook.² CEC Technologies Limited (CEC), the successor to Chinook, has now filed a petition for staff adjustment. This order denies CEC's petition for staff adjustment, as discussed below, without prejudice to CEC seeking similar relief in the ongoing hearing established by the May 8 Order.

Background

2. The Commission has previously ordered that producers must reimburse Northern for Kansas ad valorem taxes collected after October 1983 that resulted in the producer collecting amounts in excess of the Maximum Lawful Price (MLP) established pursuant to the Natural Gas Policy Act (NGPA) of 1978.³ In 1993, following a court remand in

¹ 102 FERC ¶ 61,007 (2003).

² 103 FERC ¶ 61,152 (2003).

³ Parties filing were Ensign Operating Company and Ensign Oil & Gas, Incorporated, Sterling Production Company, Texaco Exploration and Production Inc., Key Gas Corporation and Key Gas Holding LLC, the Indicated Producers (Anadarko Petroleum Corporation, ExxonMobil Production Company and BP America Production Company), Pioneer Natural Resources USA, Inc., Chesapeake Energy Corporation, the Iowa Utilities Board, and Northern.

1988⁴, the Commission ruled that Kansas' ad valorem tax did not qualify as a reimbursable severance tax under Section 110 of the NGPA,⁵ and ordered producers to refund the excess amount over the MLP that they collected since 1988, and flow through the refunds to their customers. In 1996, the Court of Appeals affirmed the Commission, but held that the producers must also make refunds from 1983, the year the reimbursement was first challenged at the Commission, to 1988.⁶

3. On September 10, 1997, the Commission, as directed by the court, issued an order requiring producers to refund amounts with interest, that unlawfully exceeded the applicable MLP, for the period commencing October 3, 1983, and directed pipelines to submit Statements of Refund Due to first sellers/producers indicating the refunds claimed by the pipeline, and then file reports reflecting those statements with the Commission.⁷

4. A number of producers filed various pleadings with the Commission, asserting that the refund amounts claimed by Northern were incorrect, or seeking relief from the refunds for various other reasons. To resolve these disputes the parties participated in extensive settlement discussions with Northern which led to the Commission's approval of a settlement on December 27, 2000 (Settlement).⁸

5. The Settlement relieved producers of liability for refunds of \$50,000 or less, and provided for additional relief for refunds in excess of \$50,000 in accordance with a specific refund reduction formula. The amount each producer owed after application of the refund reduction formula was set forth in the Settlement. A producer was deemed to have joined the Settlement if it paid the amount specified in the Settlement by a certain date. Many producers paid the amount, but some did not, including Chinook.

6. The January 2 Order directed producers that did not join the Settlement to pay the Kansas ad valorem tax refunds that were shown on Northern's May 2002 refund report as still outstanding, and listed them, including Chinook, in the appendix to that order. Even

⁴ Colorado Interstate Gas Co. v. FERC, 850 F. 2d 769 (D.C. Cir. 1988).

⁵ Colorado Interstate Gas Co., 65 FERC ¶ 61,292 (1993), reh'g denied, 67 FERC 61,209(1997).

⁶ Public Service Company v. FERC, 91 F.3d 1478 (D.C. Cir. 1996), cert. denied, 520 U.S. 1224 (1997).

⁷ Public Service Company of Colorado, 80 FERC ¶ 61,264 (1997), reh'g denied, 82 FERC ¶ 61,058 (1998), aff'd in relevant part, Anadarko Petroleum Corporation v. FERC, 196 F. 3d 1264 (D.C. Cir. 1999), reh'g, 200 F.3d 867, cert. denied, 120 S. Ct. 2215 (2000), order on remand, 91 FERC ¶ 61, 264 (2000) (Public Service).

⁸ Northern Natural Gas Company, 93 FERC ¶ 61,311 (2000).

though these producers had not entered the Settlement, the Commission extended the Settlement's refund reduction provisions to all producers listed in the appendix. The producers had 30 days from the date of the order to either; (1) make payment of the amount owed under the Settlement; or (2) make arrangements for the payment of that amount. Northern was also ordered to seek recovery of the full refund amount from producers who did not take either action.

7. A number of producers/first sellers filed requests for rehearing of the January 2 Order and staff issued data requests on the refund liability status of parties. In the May 8 Order, the Commission granted and denied rehearing, granted a petition of relief, ceased collection efforts for certain producers/first sellers and set others, including Chinook, for hearing.

CEC's Request for Relief

8. On October 28, 2003, CEC filed a petition for staff adjustment under Section 502(c) of the NGPA⁹, and Rules 207 and 212 (18 CFR §385.207 - § 385.212) of the Commission's Rules of Practice and Procedure. CEC seeks relief from paying Kansas ad valorem tax refunds to Northern, pursuant to the Commission's January 2 Order.

9. In this petition, CEC asserts that it first became aware of a refund claim against it earlier this year when Northern sent CEC a letter (after determining that Chinook had changed its corporate name to CEC) stating that Chinook had a Kansas ad valorem refund obligation to Northern because of a working interest that Chinook had in natural gas wells in Comanche County, Kansas.

10. CEC asserts that: (1) it had no knowledge of the claims made by Northern and therefore is not in a position to affirm or deny Northern's claims; (2) it does not own any gas producing properties in Kansas or have any records of Chinook or CEC ever receiving any revenues from Northern or from any other pipeline with respect to gas producing properties in Kansas; (3) it owns no working interests in any gas producing properties; (4) it has no record of such Kansas properties; (5) it has virtually no revenues from any source with which it might make refunds; and (6) it does not have the financial resources to prosecute its claim for relief through the evidentiary and multiple briefing phases associated with the Commission hearing in Docket No. RP98-39-029.

11. It is for these reasons CEC requests that the refund claim be waived. CEC contends that the Commission waived refund claims in similar circumstances in Lowery Exploration, Inc., Docket No. GP87-77-000.¹⁰ CEC argues, like in Lowery, that it acquired ownership in Chinook in circumstances that are not typical to Commission's

⁹ 15 U.S.C. § 3142 (c) (1982).

¹⁰ 45 FERC ¶61,317 (1988).

refund proceedings and the natural gas business in general.¹¹

Discussion

12. We will deny CEC's petition for staff adjustment. The Commission's May 8 Order already makes CEC's refund liability the subject of a Commission hearing in Docket No. RP98-39-029. Opening an additional proceeding to address this issue would be duplicative and is not an efficient use of the Commission's time and resources.¹² This hearing is the proper venue for CEC to pursue its claims of inequity and petition for relief since it allows for CEC's claims to be evaluated in the context of the full factual record developed by parties for decision by an Administration Law Judge. For this reason, we direct CEC to pursue its claims in that hearing and deny its petition for staff adjustment in the instant docket.

The Commission orders:

CEC's petition for staff adjustment is hereby denied, as discussed in the body of this order, without prejudice to CEC seeking the same relief in the hearing in Docket No. RP98-39-029.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹¹ In late 1986 or early 1987, Ronald Schnier acquired CEC as a part of a bankruptcy proceeding, that Chinook had instituted in Case No. 85 B 05963 C in the United States Bankruptcy Court for the District of Colorado, the debt and equity of Chinook. Following such acquisition, the corporate name of Chinook was changed to CEC. Mr. Schnier, who is the medical equipment supply business, had no prior connection with Chinook. He acquired Chinook for the purpose of using Chinook's net operating losses to offset the profits of certain other corporate assets that Mr. Schnier owned. However, due to various timing and other problems, Mr. Schnier was never ever able to realize this intent, although he still owns a majority interest in CEC.

¹² See Stowers Oil and Gas Co., 27 FERC ¶ 61,001 (1984).